50. *Implementation of Real-Time OSS.* At the April 14 session, SWBT provided an update on its implementation plans for advanced services OSS.[26] I requested at that session that SWBT provide a list of databases that it plans to provide electronic, real-time access to as part of these OSS enhancements. SWBT's counsel initially refused to provide this list. Texas Commission staff requested that SWBT provide this information, along with a list of milestones for implementation of the necessary OSS changes.[27]

51. Covad is very concerned that these OSS changes will not be fully functional when "launched." As discussed above and in other filings in this FCC proceeding, significant problems have already been manifest in SWBT's March 18 scheduled "upgrade" to its OSS. At the April 13 collaborative, SWBT's witness Carol Chapman admitted that "we had some difficulties with the 3/18 release, and we are working to get those corrected as soon as possible this month."[28] Chapman even stated that "I don't know if we are going to be able to" correct the OSS change launched on March 18, that "[w]e don't have a full plan" on how to correct the problems because they are "still isolating the issues to make sure that everything gets taken care of."[29]

52. Covad's position in this proceeding has been that these operational issues and bugs must be fully implemented prior to 271 authority. The FCC must examine carefully whether SWBT corrects the problems already manifest in its advanced services

---

25 April 13-14 Tr. at 548-49.

26 *See* also Chapman/Dysart Supplemental Aff. at ¶ 97.

27 April 13-14 Tr. at 778-782.

28 April 13-14 Tr. at 28-29.

29 *Id.* at 29.

OSS and must also ensure that SWBT fully meet its promised milestones (especially the April 29 and May 29 dates) that are approaching. The FCC's goal of facilitating competitive entry by advanced services providers like Covad requires no less.

53. *Establishment of Firewalls.* In its supplemental filing, SWBT did not completely set forth the status of its compliance with the firewalls required by the Texas Commission in the Covad/Rhythms Arbitration Award. It became apparent in the April 14 session before the Texas Commission staff that SWBT *has not* changed any corporate policy in response to the Covad/Rhythms Arbitration Award—despite a clear and unambiguous decision by the Texas Commission.

54. As discussed in Covad's opening comments in this FCC proceeding, the Covad/Rhythms Arbitration uncovered several specific instances of actual discriminatory conduct. In particular, the Texas Commission found that—

- SWBT retail ADSL personnel had superior access to loop makeup information.[30]
- SWBT shared CLEC collocation and deployment information with ADSL Retail Personnel.[31]
- SWBT provided ADSL retail personnel discriminatory and competitively significant access to network assignment databases

---

[30] Covad/Rhythms Arbitration Award at 61. In particular, the Arbitrators noted that SWBT's outside plant engineers and loop assignment center personnel have access to LFACS and LEAD databases that contain loop makeup information.

[31] The Texas Commission found disturbing evidence that "shows that SWBT has already shared with its retail ADSL personnel a list of central offices in which CLECs have collocated or those in which CLECs seek to deploy services." *Id.* at 68-69.

that would "easily allow SWBT's retail operations to gain significant advantage over their competitors."[32]

In response to these discriminatory acts, the Texas Commission ordered three specific remedies:

- SWBT must not assign employees to both wholesale and retail responsibilities;[33]
- SWBT employees should not be allowed to access information "that in any way may advantage its retail advanced services operations over those of its competitors."[34]
- SWBT must file a plan to build a "firewall" between SWBT's retail and wholesale organizations in order to restrict the flow of information between SWBT's retail and wholesale operations.[35]

55. All SWBT has done thus far to implement these remedies has been to file a "draft" letter before the Texas Commission that simply restates *existing* SWBT corporate policies. SWBT argued in the April 14 collaborative that the company policy that existed prior to the Arbitration Award was sufficient to meet the Award's

---

[32] *Id.* at 70 (citing exhibits and evidence).

[33] *Id.* at 61 ("SWBT should not be allowed to assign employees to both wholesale and retail responsibilities").

[34] *Id.* The Texas Commission also ordered SWBT to "provide actual, real-time loop makeup information to CLECs rather than a pre-qualification or loop qualification process because SWBT's back office personnel have the ability to access relevant actual loop makeup information in real time through the back office databases." *Id.* at 65.

[35] *Id.* at 70.

requirements. This point was first articulated in paragraph 98 of the Chapman/Dysart Supplemental Affidavit.[36]

56. With all due respect, it is clear from the Texas Commission's findings in the Covad/Rhythms Arbitration Award that SWBT's existing corporate policies *did not* prevent the actual instances of discrimination and abuse from happening. Covad and Rhythms uncovered in that proceeding serious evidence of a corporate culture in which network and CLEC information were misused to advance corporate retail efforts. The Texas Commission did not take the extraordinary steps to sanction SWBT and require establishment of a firewall (including requiring separate wholesale/retail employees) only to have SWBT meekly claim that its existing corporate policy was sufficient.

57. In fact, none of the Texas Commission's prescribed remedies have been fully implemented. Two weeks ago, the Texas Commission launched an investigation as to whether SWBT has in fact complied with the firewall portions of the Covad/Rhythms Arbitration Award (Exhibit CGS-6). Yesterday, the Texas Commission ordered SWBT to submit a revised firewall plan by May 1, 2000 (Exhibit CGS-7). SWBT simply has not shown that it is no longer assigning both wholesale and retail responsibilities to its employees and that it has changed its systems or work responsibilities so that its retail and wholesale employees cannot access information in a way that unfairly advantages SWBT's retail services.

58. Abuses appear to be continuing. In late March, 2000, Covad became aware that its wholesale account team (responsible for providing Covad network services and unbundled elements in all SBC states, including Texas) had been recruited to assist

36 April 13-14 Tr. at 783-84.

SBC's Texas 271 application. Exhibit CGS-8 contains an exchange of correspondence that demonstrates that Covad's wholesale needs were essentially put "on hold" for several days while the wholesale account team assisted SBC's retail long distance efforts. This incident appears to violate the Texas Commission's order that wholesale employees (Covad's account team) not be assigned retail responsibilities and that confidential wholesale information not be used to advance SWBT's retail plans.

59. These issues must not be taken lightly. The Texas Commission explicitly noted in the Award at page 61 that it was "troubled by the inconsistencies regarding the relationship between SWBT's retail and wholesale operations, and find that the issue of nondiscriminatory access must be further addressed."[37] In an environment in which Covad's largest competitor is also its most important supplier, the methods in which SWBT and SBC regulate access to wholesale and network information is critical. Covad looks forward to reviewing SWBT's upcoming filing made in response to Order No. 7 (Exhibit CGS-7).

60. *Performance Measurements.* Chapman and Dysart claim in paragraph 99 of their Supplemental Affidavit that the Award "has become the basis of SWBT's xDSL-related performance measurements" and that "the intervals established by the arbitrators are the standards against which SWBT's performance in Texas is measured."

61. That statement is incorrect. Even a casual glance at the 800-page transcript from the April 13-14, 2000 collaborative sessions reveals that a considerable amount of work must still be done to finalize DSL-related performance measurements and business rules required by the Covad/Rhythms Arbitration Award. The Texas

---

[37] Covad/Rhythms Arbitration Award at 61.

Commission staff has solicited proposals and counterproposals on these measurements and benchmarks. The process is on-going, and final resolution has not yet occurred.

62. As discussed above, Texas Commission staff appears to be migrating towards using "benchmarks" to assess SWBT wholesale performance, rather than a simple "parity" comparison. However, it is incorrect for SWBT to claim that "the intervals" established in the Award (5 business days for loops without conditioning/10 business days for conditioned loops) are now the benchmark standards SWBT measures itself against in Texas. SWBT's Aggregate Performance Measurement Reports (filed on March 23, 2000 in this proceeding) claim to track DSL loops, but still utilize only "parity" benchmarks for assessing SWBT's performance in the following categories—

- Average Installation Interval (PM 55.1)
- PM 58 (Percent SWBT Caused Missed Due Dates)
- PM 59 (Percent Trouble Reports w/in 30 Days)
- PM 60 (Percent Missed Due Dates due to Facilities)
- PM 61 (Average Delay Days due to Facilities)
- PM 62 (Av. Delay Days for SWBT Missed Due Dates)
- PM 63 (SWBT Caused Missed Due Dates >30 Days)
- PM 65 (Trouble Report Rate %)
- PM 67 (Mean Time to Restore)
- PM 69 (Repeat Reports %)

SWBT's March 23, 2000 filing does not track the one Performance Measurement that would include a benchmark instead of a parity measure (PM 56, "Percentage Installations Completed in X Days"). Finally, Covad's carrier-specific reports for these measures (attached as Confidential Exhibit CGS-9) do not contain any DSL-loop entries for the above performance measurements, with the exception of PM 55.1.

63. In short, SWBT has not fully implemented revised performance measurements as part of the Covad/Rhythms Arbitration Award. As described above, that process continues before the Texas Commission. It is Covad's opinion that until comprehensive and final DSL-related performance measurements are fully implemented, SWBT should not be granted interLATA authority.

Marconi DISC*S Discussions

64. On April 25, 2000, David Rosenstein and I attended a collaborative session before Texas Commission staff, in which the issues of providing xDSL-capable loops and BRI ISDN loops through digital loop carrier ("DLC") systems were discussed. The Chapman/Dysart Supplemental Affidavit describes their view that CLEC IDSL technology is incompatible with a particular type of DLC deployed by SWBT, the Marconi DISC*S system. As a result, Chapman and Dysart assert that this issue is one of the reasons why SWBT's performance in providing BRI ISDN loops to CLECs is "out-of-parity" with its retail provisioning.

65. The Supplemental Declaration of David Rosenstein comprehensively rebuts Chapman's and Dysart's argument, and points out several factual errors they make. However, one factual point was made in April 25 session that is important to understanding the extent to which the Marconi DISC*S issue could even theoretically impact SWBT's BRI ISDN loop performance.

66. SWBT witnesses stated on April 25 that the Marconi DISC*S system serves only approximately 10% of SWBT's loops in Texas. In addition, fewer than half

(five) of the 12 slots on the Marconi DISC*S system fail to provide a loop that complies with Bellcore and industry standards, which impacts IDSL technology. In addition, Habeeb estimates that approximately 91% of BRI ISDN loops are used for DSL service.[38] Therefore, if the Chapman/Dysart DISC*C argument is taken at face value, on a going-forward basis only approximately 3.8% of CLEC BRI ISDN loop orders should be adversely affected by the failings of the DISC*S system. While Chapman and Dysart undertake an analysis of BRI ISDN trouble tickets,[39] that analysis does not address other

---

38 Habeeb Supp. Aff. ¶ 12.

39 Chapman/Dysart Supp. Aff. ¶¶ 55-56. Since Chapman and Dysart have not provided the time period in which these DISC*S and BRI ISDN loop trouble tickets were analyzed, let alone access to the raw data, it is impossible for the Commission or third parties to verify their analysis.

significant out-of-parity reports for BRI ISDN loops, such as the fact that CLECs are many times more likely to face delayed installations due to "lack of facilities" (PM 60-[illegible]) than SWBT retail.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 26, 2000

Christopher Goodpastor

High-speed Internet access battle brews// Covad lays groundwork for fight as large rivals drop prices

BYLINE: Bruce Hight
DATE: 03-20-2000
PUBLICATION:
EDITION:
SECTION:
PAGE: E5

Covad▷ CommunicationsWhat: Sells high-speed Internet connectionsHeadquarters: Santa Clara, Calif.Competitors: Time Warner, Southwestern Bell Telephone Co. and othersDhruv Khanna says ◁**Covad**▷ Communications Co. today is where America Online was in 1995 -- up, running and about to take off big-time.

Khanna is executive vice president and general counsel of ◁**Covad**▷, based in Santa Clara, Calif., so naturally he's going to hype his company's prospects.

Still, his boast is not entirely without foundation, and he says Austin residential and business consumers -- few of whom have ever heard of the company -- can expect to see and hear the ◁**Covad**▷ name a lot more starting this summer.

"We're going to do whatever the customer wants," Khanna said in a recent interview.

If he's right, then Austin consumers might begin to see a real fight develop among those wanting to sell them high-speed connections to the Internet. Time Warner Cable is pushing its Road Runner service that uses cable television lines, and ◁**Covad**▷, Southwestern Bell Telephone Co., and others push the cryptically named "DSL" technology that uses ordinary telephone wires.

Speeds vary, but the high-speed connections mean that jumping from site to site on the Internet is usually much quicker than stopping and waiting for the page to load and then go. In other words, it's mMore like changing TV channels and, less like waiting for the mail carrier.

Southwestern Bell and Time Warner already are jockeying for position with special offers that eliminate installation and equipment charges for their respective services; they had been charging $50 or more.

The rising consumer wave that the cable and DSL companies want to ride was recently described by a high-tech consulting company based in Boston, the Yankee

Group: In 1999 there were a total of 1.4 million subscribers to cable modems or DSL services. By 2005, the Yankee Group predicted, there will be 16.6 million subscribers -- more than 10 times the current level.

DSL stands for digital subscriber line, and it comes in various flavors. The best known is probably ADSL, for asymmetrical digital subscriber line.

Essentially, DSL is an electronic wizardry that bypasses a big speed barrier inherent in the conventional "twisted pair" copper telephone wire that goes into homes and most businesses. That speed barrier is why conventional modems will never go faster than 56,000 bits per second. DSL, in contrast, goes up to 1.5 million bits per second.

Besides speed, DSL is also attractive to many users because it is always "on," eliminating the need to dial in and log on, and because a user can simultaneously surf the Internet and make voice telephone calls on the same line.

Southwestern Bell already sells DSL; in fact, it recently has advertised it at $39.95 a month, before taxes and fees, with a free modem and no installation charge. Time Warner has offered Road Runner at $44.95 a month, before taxes and fees, and no installation charge.

Several Austin Internet service providers sell ◁**Covad**▷ DSL. For example, Onramp Access Inc. sells ◁**Covad**▷ DSL for $59.95 a month. ◁**Covad**▷ expects the price to come down later this year.

For technical reasons, local telephone companies cannot provide DSL to many of their customers. So Southwestern Bell's holding company, SBC Communications Inc., last year announced a three-year, $6 billion project to upgrade its networks so that it could provide DSL to virtually all its customers.

Other companies also sell DSL here or elsewhere in the country, usually as a wholesaler working through local Internet service providers. They include ◁**Covad**▷, Rhythms NetConnections Inc., based in Englewood, Colo., and NorthPoint Communications Group Inc., based in San Francisco.

◁**Covad**▷ is perhaps the most aggressive. It and Rhythms fought Southwestern Bell at the Public Utility Commission over network interconnection contracts. The fight got so bitter that Southwestern Bell, for the first time in the 23-year history of the PUC, was forced to pay $850,00 in sanctions for failing to produce documents and witnesses. The $850,000 was used to reimburse the additional legal costs incurred by ◁**Covad**▷ and Rhythms.

The contract ultimately approved by the PUC was a good one, Khanna said, but he added that the drawn-out legal battle delayed ◁**Covad**▷'s plans for Texas by six to nine months.

Khanna said the company, founded in 1996 and operational in 1997, is building "a nationwide footprint" and that by the end of the year it should be able to reach half of all the homes and businesses in the United States. In 1998, he said, the company had 3,900 lines installed; by the end of 1999 it was 57,000, and, citing analysts' estimates, he said the company could have 290,000 lines by the end of the year.

◁**Covad**▷'s aggressive marketing and advertising to build up its identification with the public, already active in other cities, will be seen here starting this summer, Khanna said. But the company will still sell DSL through Internet service providers, not directly.

A survey of 16 brokers recently showed at least 15 of them rating ◁**Covad**▷ stock as a moderate or strong buy, one as a hold and none as a sell. Frost Securities Inc. issued a report last month recommending a buy for ◁**Covad**▷ stock "based on the company's solid position in the fast-growing DSL market."

The DSL competitors, including ◁**Covad**▷, generally use their own electronic equipment but rely on the wires owned by local telephone companies, including Southwestern Bell, to connect with their customers.

But the competitors have had a disadvantage. While Southwestern Bell uses a customer's existing voice telephone line to provide DSL, the customer who buys DSL from a competitor has had to get a separate phone line.

Khanna said the additional line has added about $20 a month to the cost of DSL sold by ◁**Covad**▷ and other competitors, a real deterrent for residential customers.

"The (local phone companies) are cleaning our clocks in the residential area," Khanna said. "We're doing that to them in the business area."

But the Federal Communications Commission has ordered the local phone companies to start "line sharing," so that a competitor -- just like Southwestern Bell -- can use an existing telephone. That starts in June, Khanna said, which is one reason why consumers can expect to see new bids for their business this summer and, maybe, pressure to lower prices.

"I don't think we're going to be the driving force on price," Khanna said. "We're going to be followers."

Still, he said, price is not the only factor considered by customers: "I think people are sick and tired of the telephone company, frankly."You may contact Bruce Hight at bhight@statesman.com or 445-3977.

Illustrations/Photos: PHOTO;Photo: Ralph Barrera; Matt Denny, a field service technician withCovad Communications, connects the wiring circuit as he installs aDSL line at CWS Apartment Homes' North Austin office.

2

Express-News Business & Technology News

SBC hit by state penalties

Fines could affect long-distance plans

(Last updated Tuesday, Apr 18, 2000)

By Sanford Nowlin
Express-News Business Writer

San Antonio-based SBC Communications Inc. has incurred almost $900,000 in state penalties for problems it had transferring customers from its local phone service to that offered by competitors.

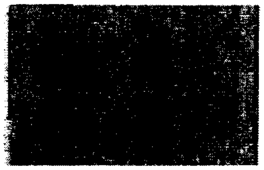
The fines come at a critical time for the telecommunications giant, which is trying to convince federal regulators it has opened its markets to competitors and therefore should be allowed to sell long-distance service in Texas.

Companies that offer local phone service in competition with SBC said the fines — which SBC paid the state in January and February — are proof they still cannot compete on an equal footing in Texas.

"I'm hopeful the (the Federal Communications Commission) will pay attention to this and make them improve their record before they give them access to the long-distance market," said Scott McCollough, an attorney for e.spire Communications Inc. and other competitive phone firms.

Under federal law, regional Bell companies such as SBC must convince the FCC they've opened their markets before they can sell long-distance service in their home territories.

Officials with SBC, the parent company of Southwestern Bell, said the state fines would have little bearing on its long-distance application.



which the FCC will vote on by July 5.

"I don't think this is an indication we're not ready," SBC spokeswoman Saralee Boteler said.

The state penalties stem from standards SBC, its competitors and the Texas Public Utility Commission last year set to ensure that competitors could easily buy access to SBC's networks and customers could switch to a new phone company without a service outage.

SBC can be required to pay up to $289 million a year if it fails to meet a laundry list of 1,900 "performance measures" aimed at determining how well it transfers customers to new providers and processes orders from competitors.

"There's no doubt we'd rather be perfect," Boteler said. "But we've paid penalties on only 21 measures out of 1,900. The federal regulators have that in perspective."

January was the first month SBC was required to pay fines if it didn't meet those standards.

It paid $472,600 in January and $407,000 in February. Information about its March penalties won't be available until later this month.

While SBC met most of its measures, competitors claim the fines indicate the company's ability to process orders is getting worse rather than better.

"It shows that as the number of customers increases, their ability to handle those orders decreases," AT&T spokesman Kerry Hibbs said. "That's the problem."

However, SBC's Boteler disputes that, saying the two months of data doesn't demonstrate a trend.

Likewise, PUC spokesman Terry Hadley said the commission doesn't view the January and February penalties as indications SBC is unable to work with other phone companies.

"It looks like these are issues they can solve," Hadley said. "This tells us the agreement is working."

SBC filed its original long-distance application with the FCC in January, but the company withdrew the application earlier this month when it became apparent the agency might reject it.

The company's request appeared to be headed for a negative vote after the Justice Department twice filed papers with the FCC warning SBC hadn't fully opened its markets.

SBC refiled its long-distance application April 6 and provided more data to support it. However, the move set back the date of the FCC vote from April to July.

If approved, SBC would be the second Baby Bell allowed into the long-distance business.

Bell Atlantic received FCC approval late last year.

---

snowlin@express-news.net

Tuesday, Apr 18, 2000

Access #: 10035459
Paper: THE KANSAS CITY STAR
Headline: Internet partners attack tactics Southwestern Bell cuts price, they say
Date: 03/28/00
Day: Tuesday
Edition: METROPOLITAN
Section: NATIONAL
Page: A1
Credit: The Kansas City Star
Byline: TED SICKINGER

Scores of small Internet service providers that joined with Southwestern Bell last year to sell high-speed connections now claim the phone giant's pricing and marketing practices are driving them out of business.

Internet providers across Southwestern Bell's five states say the company's own Internet subsidiary is undercutting their pricing, using Bell's proprietary customer information and poaching their customers. The former competitors now have banded together to take their case to utility regulators.

The Texas Internet Service Providers Association, which represents 200 Internet providers in that state, met recently with the enforcement bureau at the Federal Communications Commission and members of Congress to lodge complaints.

"In the last three months, it's become apparent that Southwestern Bell is ... leveraging their control of the telephone network to dominate the Internet access markets," said Scott McCullough, the Texas group's lawyer.

An FCC enforcement bureau spokesman would say only, "We are looking into it."

Southwestern Bell denies the claims and says it is simply competing with other phone, cable and Internet companies that offer similar services.

"The bottom line is that the ISPs are valuable partners," said Kristen Childress, a spokeswoman for the phone company about Internet service providers. "They're our friends. They're helping us."

The rift stems from the sale of digital subscriber lines, or DSL, a popular new service that allows customers to connect to the Internet over their existing phone lines at speeds up to 50 times faster than they could using a standard modem.

Deploying DSL is a priority for Southwestern Bell's parent, SBC Communications, which is spending $6 billion to extend DSL service to 80 percent of its customers by 2003, and is eager to capture early adopters of the new technology.

Consequently, when the phone company introduced DSL last year, it courted Internet providers across Texas, Kansas, Missouri, Oklahoma and Arkansas to join a partnership and sell high-speed lines to their established dial-up Internet subscribers.

More than 190 Internet providers signed on. To enter the partnership, providers like DSL Onramp in Overland Park invested thousands of dollars in new equipment and entered long-term contracts for high-capacity connections to Southwestern Bell to support the expected deluge of customers.

According to SBC, DSL has been a huge success. The company recently told investment analysts that it had sold 169,000 DSL lines through the end of 1999, was adding 2,000 subscribers a day, and hoped to have 1 million subscribers by the end of 2000.

The company's partners, however, have been up in arms since Feb. 14, when the Bell subsidiary, Southwestern Bell Internet Services, lowered the monthly price on its DSL service, including Internet access, to $39.95. The subsidiary also waives $400 in equipment and installation charges for customers who sign a year's contract.

"The prices do seem attractive now," said McCullough, "but if they succeed in driving out the competition, the price of Internet access itself is going to go up."

Southwestern Bell says the special offer, which ends April 30, is designed to compete with cable companies that offer high-speed access for $40 a month, or Internet companies that provide dial-up Internet access for free.

Most partner Internet providers pay $39 for the underlying DSL line that they resell to their customers, and then add their own Internet access fees to cover the cost of their connections to the phone company and the Internet.

They say they can't compete with Bell's $39.95 price, particularly when the phone company throws in free equipment.

"We weren't making any money selling Internet access for $10 a month," said Matthew Wolfe, director of sales at Grapevine.net in Overland Park. "When they lowered it to 95 cents a month, they pretty much forced us out of the residential DSL market."

Eric Boyer, director of DSL planning and strategy at Southwestern Bell's parent company, SBC Communications, noted that the Internet providers could get the DSL lines for $30, rather than $39, and that the phone company was providing a $170 sales commission for every line that the providers sell, which could be used to defray customers' equipment costs.

But the providers said the $30 rate was available only if they agreed to a four-year commitment to take a huge number of lines, and that the sales commission still left them without recurring monthly revenue to cover their other costs and make any profit.

Larger providers like Grapevine still can compete for business customers, who typically are willing to pay more for e-mail and Web site hosting, and often contract with their provider for Web design work.

Smaller Internet providers that built businesses serving residential customers, however, are now telling customers that ask about Bell's offer to take it.

Federal regulators generally have taken a hands-off approach with the Internet industry.

The Internet providers now worry that regulators will be reluctant to delve into a deal that provides cheaper service to consumers. They are quick to note, however, that pricing isn't their only complaint.

The providers say that Southwestern Bell, the regulated phone company, is colluding with its unregulated Internet subsidiary, Southwestern Bell Internet Services, in violation of telecommunications laws, and that the two are using a variety of underhanded marketing tactics to win customers.

"When Bell's Internet operation is calling all our ISDN customers (who get another type of high-speed service) and telling them to get DSL, or telling customers to stop their current ISP and get it from us, they've gotten the information somewhere," said McCollough, the lawyer for the Texas group of Internet providers.

"The only way they can get it is by combing through (the phone company's) subscriber information," he said. "It's prohibited for the telephone company to give this information to anyone unless subscribers give permission."

Childress, the spokeswoman for Southwestern Bell, said the Bell subsidiary did not get proprietary information from the phone company.

"Those sales tactics that are being referred to are against our policies," Childress said. "Employees that are using them will be re-trained or subjected to disciplinary actions if needed."

The providers, however, think the phone company is determined to own the customer altogether, not just the underlying phone line.

Martin Young, owner of Quik Internet in Rogers Ark., said he filled out an application to join Bell's partnership and was approved. He said he never heard from the partnership coordinator again and that he couldn't get anyone at the phone company to return his calls and e-mails.

"A lot of my customers are Wal-Mart vendors," he said. "They're calling all them up and offering them DSL, and I'm losing my commercial accounts."

Other Internet providers question whether there is any real separation between the phone company and the separate Internet subsidiary, SBIS.

Some say that even when their customers ask to be connected with an independent provider, Bell's agents are asking them why they're not buying SBIS's cheaper offer.

"We really tried to roll with the punches until the day they actually started stealing customers," said Glenn Pieper, sales director at PrismNet in Austin, Texas. "I had a customer I'd just closed, and he sent me an e-mail asking, 'What's going on here? Are they trying to put you guys out of business?'

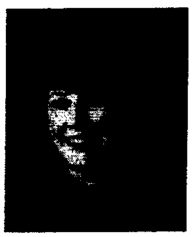
"I can't live with my contractually stated partner stealing my customer."

OPINION

March 24, 2000

Fighting Instead Of Switching

By Carol Wilson



Back in the last century, during the pioneer days of broadband access services, the common sentiment was that the first brave service provider to capture a customer with high-speed Internet access would win that customer's loyalty forever.

Of course, that was 1999. We've learned a lot since then.

I've learned, with little effort, that there are 20 Internet service providers (ISPs) using four competitive local exchange carriers that have wired the central office in my little suburb of Skokie, Ill. That means 20 different companies, each with a different pricing scheme and some with different sets of services, that I could pick as my Digital Subscriber Line (DSL) provider.

To date, I haven't changed for the simple reason that I'm happy with my DSL service - actually, I'm ecstatic about my DSL service - and I see no reason to put my productive little self through the hassles of changing services.

On the other hand, as Tevye says so often in *Fiddler On The Roof*, my son would be much happier if the high-speed access service that he loves to borrow for "research" were connected to the chat room in which he and his buddies meet on the chat room in which he and his buddies meet on a nightly basis. So if America Online comes knocking at my door with a high-speed access service that includes those ubiquitous teenager chat rooms, would I jump? I can't honestly say that I wouldn't, if the price were right and the level of service met my current expectations.

I can say, however, that those companies that are struggling with their broadband deployment are not making the lifelong connections they hoped to with their customers. Try going onto any chat or newsgroup associated with DSL and mention the words "Bell Atlantic." Then, stand back and watch the consumer rage fill the room. By contrast, talk to ISPs in Texas trying to compete with SBC Communications' new cheaper Asymmetric DSL service - $39.95 per month with no installation fees or equipment charges - and you'll see the other side of the story. Customers who were willing to buy DSL access from their friendly ISP suddenly change their mind when lured by the siren call of cheap service.

According to the DSL analyst community, as 1999 drew to a close, reports of customers dropping the cable modem service with which they were initially thrilled and joining the stampede to DSL for more secure bandwidth at a guaranteed rate increased. Where customer loyalty is concerned, I suspect the broadband wars have just begun.

Talkback: Post your comment here

No comments have been posted yet

debut

- MARKET CLOSE: Techs enjoy modest gains
- Judge's warning prompted new Microsoft offer

NEWS

DSL Death Knell

By Randy Barrett and Carol Wilson, Inter@ctive Week
March 29, 2000 1:38 PM ET

The broadband revolution was supposed to give Internet service providers a way to satiate their customers' greed for speed. And a way to gain market share, add value and drive up revenue. But only about a year after they began to deploy Digital Subscriber Line services — turning conven tional phone lines into high-speed pipes to the Net — they may be about to hit a wall. Bell telephone companies have begun to aggressively push their own DSL access services. And they're doing it at prices so low that many small and mid- sized ISPs can't match them. Or, if they do, they can't make money.

The threat is very real to some smaller Internet companies, such as members of the Texas Internet Service Providers Association (www.tispa.org). The group sounded an alarm with the Federal Communications Commission (www.fcc.gov) in mid-March, saying that the very existence of some companies is challenged by SBC Communications' new $39.95-per-month DSL access — and what the TISPA believes are the telephone company's illegal marketing practices.

"Our companies can't compete at those prices and survive," said Scott McCullough, counsel at the 100-member TISPA.

Other small ISPs, such as foreThought.net and Nobaloney.net, expect to survive, as they have before, through better customer service and closer relationships to their customers.

In fact, it's possible that this is actually the lull before the real storm. Coming soon are technologies that could cause real fisticuffs between ISPs and Bell companies — technologies that allow consumers to install their own high-speed access equipment and

ISPs to put a high-speed data service onto a customer's existing phone line, rather than order and install a whole separate line for data.

"The current market conditions are an anomaly that won't last long," said Judy Levine, vice president of consumer markets at NorthPoint Communications (www.northpointcom.com), a competitive local exchange carrier (CLEC) that builds DSL networks and resells the service to ISPs. "There definitely is economic and competitive pressure on ISPs today, but it won't last long. By this summer we will have line sharing and we will begin to offer G.lite, and at that point, the economics will be very different from what they are now."

Threatened existence

Trouble with regional Bell operating companies (RBOCs) is nothing new to ISPs. During the early days of the dial-up boom in the mid-1990s, small access providers complained that many Bells were limiting the availability of high-speed digital lines, known as Integrated Services Digital Network Primary Rate Interface lines, that were used to connect customers to a bank of modems. The practice, the ISPs said, caused busy signals and chased customers to competing Bell-affiliated Internet providers. Then, as now, the Bell companies fervently denied the accusations, and regulators ultimately took little notice.

The arrival of DSL is again causing consternation, because ISPs and local competitors say they have to wait up to two months to get DSL lines installed and, during that time frame, the Bell-owned ISPs have been known to steal their customers.

But ISPs hardened in past battles are being as aggressive as their legal budgets will allow in airing their complaints before the FCC and state public utility commissions from Texas to Florida. As with Primary Rate Interface lines of old, local loops are controlled by the Bells and represent a competitive beachhead that at least some Bells appear extremely unwilling to give up.

"Small ISPs will only survive if something is done at the federal level," said Sue Ashdown, executive director at a new Internet provider trade group called the U.S. Internet Service Provider Alliance (www.usispa.org). "Broadband is the way people are going to go."

The TISPA recently filed a complaint with the FCC that details what it claims is predatory pricing, DSL customer poaching and blatant favoritism by SBC (www.sbc.com) toward its own internet affiliate, Southwestern Bell Internet Services (see "SBC Pricing Puts Hurt On Small Texas ISPs," March 20, page 10). Most damaging was SBIS' recent promotion of DSL access with free setup and modem for $39.95 per month, which badly undercut the independent ISPs with which it is officially partnered.

ISPs that buy DSL lines in lower volumes have to pay $39 per month for the DSL line alone, McCullough said. When the cost of installation, customer equipment, overhead and backbone network costs are added in, the ISP has to price its service well above SBC's just to break even.

"There is overwhelming evidence — based on both a 'top-down' view of SBC's regulatory gamesmanship in relation to DSL . . . and a 'bottoms-up' review of the documented daily assaults in the trenches — that SBC and its affiliates in Texas are strategically acting in concert in an anticompetitive fashion to maintain dominance in local service and to obtain dominance in enhanced services," the TISPA wrote in its complaint.

At the heart of that complaint is the TISPA's belief that SBC's regulated phone company is sharing information about ISPs and their customers with its unregulated data unit. SBC officials disputed the charge, but said they are investigating following meetings with TISPA officials. According to McCullough, Texas ISPs believe SBC officials, from DSL installers on up, are proactively working to shift their customers onto SBIS (public.swbell. net), and are using the new DSL pricing to accomplish that goal. The TISPA complaint cited numerous cases in which SBC told an ISP and its CLEC partner that DSL could not be delivered to a prospective customer, but sold SBIS' DSL access to that same customer without a problem.

SBC officials said they view ISPs as "very important partners" in extending the reach of DSL, according to spokesman Michael Coe, who added that the company met with the TISPA and is looking into its complaints.

The Department of Justice (www.usdoj.gov) is apparently unconvinced — it cited SBC's "substandard performance" in providing competitive access to DSL lines as one of its main reasons for opposing the company's entrance into long-distance service in Texas. January data collected by the DOJ showed that performance was actually getting worse in some areas.

FCC officials could not be reached for comment on the disposition of the TISPA's complaint.

But SBC isn't the only Bell company accused of dirty tricks in the DSL wars. Louisville, Ky.-based IgLou Internet Services (www.iglou.com) filed a complaint last fall with the Kentucky Public Services Commission (www.psc.state.ky.us) alleging that BellSouth (www.bellsouth.com) is unfairly soliciting its phone customers to become customers of its BellSouth.net affiliate, sharing resources and proprietary information with that company and unfairly pricing wholesale DSL lines to shut small ISPs out of the market. Like the Texas ISPs, IgLou believes that BellSouth.net is learning of potential DSL customers from the regulated telephone company when the phone company takes a DSL order from an independent ISP.